IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6458 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UTKARSH DYES & INTERMEDIATES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6458 of 1990

MR TANVISH U BHATT for Petitioner No. 1

MR SIRAJ GORI, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 18/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the amendment order dated 24.7.1990 (Annexure "A/5") issued by the General Manager,

District Industries Centre, Valsad reducing the time limit of sales-tax exemption from "1.1.1982 to 31.12.1987" to "1.1.1982 to 31.12.1986" and the consequential amendment order dated 19.8.1990/13.9.1990 (Annexure "A/7") issued by the Assistant Commissioner of Sales-tax (Admn.), Range 5, Surat, having the effect of reducing the extent of exemption which was earlier made available to the petitioner from 50% to 45% for the petitioner's industry set up in village Mogarvadi in Valsad taluka.

2. The State Government had earlier issued Government Resolution dated 22.12.1977 containing the scheme for sales-tax exemption or sales-tax deferment to new industries set up in certain areas. The extent of exemption varied depending on the location of the industry. The State Government had declared certain areas as growth centres and divided them into four categories :-

(i) "A" Grade growth centre where the extent of exemption was 40% for 5 years;

(ii) "B" Grade growth centre where the extent of exemption was 45% for 5 years;

(iii) "C" Grade growth centre where the extent of exemption was 50% for 6 years;

(iv) "D" Grade growth centre where the extent of exemption was same as "C" grade centre plus additional benefit was to be given with which we are not concerned for the purpose of the present petition.

The same classification of growth centres was adopted when the State Government framed another sales-tax incentives scheme through Government Resolution dated 27.8.1980 under which the petitioner was granted the benefit which is the subject matter of the present petition.

3. The eligibility certificate for the purpose of the above scheme issued by the General Manager, Industries Centre, Valsad on 21.1.1982 (Annexure "A/1") stated that the petitioner's unit was located in a "C" grade growth centre. On the basis of the above eligibility certificate, the sales-tax department granted sales-tax exemption certificate dated 24.3.1982 for a period of six years to the tune of Rs.5,03,602/- on the basis of the investment made by the petitioner to the

tune of Rs.15.45 lakhs for setting up its factory in village Mogarvadi in Valsad district. The said exemption was enhanced upto 6,18,000/- by order dated 17.10.1987 (Annexure "A/3"). The petitioner had utilized during the exemption period incentive to the tune of Rs.5,80,812/and the remaining amount remained unutilized. It was long thereafter on 19.8.1990, that the Assistant Commissioner of Sales-tax (Admn.), Rang 5, Surat, passed the impugned order amending the eligibility certificate by reducing the period of incentives from 6 years to 5 years on the ground that Mogarvadi village falls in "A" grade growth centre as it is situated at a distance of 2 kms. from the municipal limits of Valsad and is not a "C" grade growth centre as stated in the certificate dated 21.1.1982.

4. The petitioner, therefore, filed the present petition for challenging the above amendments to the eligibility certificate and the exemption certificate and to restrain the respondents from making any recovery on the basis of the impugned orders. While admitting the petition on 29.8.1990, this Court granted ad-interim relief limited to the extent that no recovery be effected of the sales-tax dues pursuant to the assessment that may take place on the basis of the amendment at Annexure A/1 till 15.9.1990. Thereafter on 21.11.1990, after hearing the parties on the question of interim relief, this Court by way of interim relief directed that the Sales-tax Officer shall complete the assessment on the basis of amendment at Annexure A/5, and will compute the tax and other dues payable by the petitioner pursuant to the said amendment. However, recovery of the amount found due and payable by the petitioner pursuant to the said assessment order shall not be effected against the petitioner on the petitioner furnishing security for the said amount to the satisfaction of the sales-tax officer.

5. Mr Tanvish U Bhatt, learned counsel for the petitioners has submitted that on the basis of the eligibility certificate issued by the District Industries Centre and the exemption certificate issued by the sales-tax authorities as far back as in the year 1982, the petitioner had availed of the sales-tax exemption incentives and not collected sales-tax from its customers and had even utilized the exemption limit of Rs.5,80,812/- out of the enhanced limit of Rs.6,18,000/and the remaining amount remained unutilized at the expiry of the six year period of exemption. It was in August, 1990 that the respondent authorities came out with the amendment orders reducing the period of exemption. It was, therefore, not possible for the

petitioner at that stage to recover any sales-tax from its customers to whom the petitioner had sold the goods between 1982 and 1987. The petitioner had acted upon the certificates issued in 1982 and changed its position to its detriment by not collecting the sales-tax from its customers to the extent of Rs.5,80,812/-. By the impugned orders passed eight years after issuance of the original certificates and three years after the sales-tax exemption period was over, the respondent authorities purported to take away the sales-tax exemption incentives to the tune of Rs.2,48,375/- which the petitioner would never be able to recover from its customers. The petitioner, therefore, cannot be deprived of the benefit which had already vested in it.

6. On the other hand, Mr Siraj Gori, learned AGP for the respondent authorities has submitted that since village Mogarwadi was within the radius of 2 kms. from Valsad which was an "A" grade growth centre, the petitioner was not entitled to sales-tax exemption for more than 5 years as per the incentive scheme and, therefore, the authorities were justified in passing the impugned amendment orders to correct the mistakes made while issuing the original certificates.

7. Having heard the learned counsel for the parties, we find that it is not the case of the respondents that there was any misrepresentation on the part of the petitioner. It was the decision of the authorities in 1982 to grant sales-tax exemption upto a particular limit for a particular period. The petitioner acted upon the same and did not collect sales-tax from its customers within the extent of the exemption amount for a period of 6 years as indicated in the exemption certificate which was issued on 24.3.1982 and thereafter started collecting sales-tax from its customers and paid the same over to the State Government. By amending those eligibility/exemption certificates in the year 1990, what the respondents have done is to purport to give retrospective effect to those amendments and take away the benefits which had already vested in the petitioner. The respondents could not have done so without inviting the charge of arbitrariness and unfairness violative of the petitioner's fundamental right under Article 14 of the Constitution. The petitioner is, therefore, entitled to succeed.

6. The petition is accordingly allowed. The impugned amendment order dated 24.7.1990 (Annexure "A/5") issued by the General Manager, District Industries Centre, Valsad reducing the time limit of sales-tax

exemption from "1.1.1982 to 31.12.1987" to "1.1.1982 to 31.12.1986" and the consequential amendment order dated 19.8.1990/13.9.1990 (Annexure "A/7") issued by the Assistant Commissioner of Sales-tax (Admn.), Range 5, Surat, are quashed and set aside.

Rule is accordingly made absolute with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-